IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

GOVERNMENT APPEAL No.1110 of 2001
(Old No.2019 of 1986)

The State ... Appellants

Versus

1. Jasod Singh
2. Tara Singh
3. Nain Singh
4. Diwan Singh
5. Lal Singh

... Respondents

Dated: July 18, 2007

Sri Prabhakar Joshi, learned brief holder for the State
Sri Manoj Mohan, learned amicus curiae for Respondent Nos.2 and 4

HON. DHARAM VEER, J.

This appeal, preferred u/s 378 of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*) against the judgment and order dated 16.04.1986 passed by Special Judge, Nainital in S.T. No.232 of 1983 State Vs. Jasod Singh & others, under Sections 147/362/364/392/397 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*)

Respondents No.1 Jasod Singh, No.3 Nain Singh and No.5 Lal Singh have been reported to be died as has been reported by CJM, Nainital vide his report dated 4.8.2006, hence the appeal against Jasod Singh, Nain Singh and Lal Singh is abated.

The prosecution story is brief is that on 25.9.1982 in Village Dhanachuli Patti Sunderkhal, Jagat Singh brought some household articles by a truck which he got unloaded at the shop of Bishan Singh Bachi Singh and sent message to his family members to carry those articles to his home. He started for his home with a bag. Respondent Nos.1 Jasod Singh and No.2 Tara Singh met

him and threatened that he could not go from that place. He at once came on the road and told Gopal Singh and Himmat Singh about the incident. Meanwhile, his brother Bishan Singh, nephew Gopal Singh, his wife Smt. Ramawati and son Prem Sing arrived to carry the articles and he along with Gopal Singh started for his house. From the way, Lachman Singh also accompanied him. When they arrived from the shop of Tej Singh and Bachi Singh, respondents Tara Singh and Jashod Singh met him and caught him and started scuffle with him, respondent Nain Singh took out currency notes of Rs.4200/- from the inner pocket of his shirt which he had obtained from Haldwani as sale proceeds of his potatoes. Respondents Tara Singh, Jashod Singh, Nain Singh and Diwan Singh began to beat him. Jagat Singh raised an alarm on which his brother Bishan Singh arrived and forced the respondents. Meanwhile, respondent Lal Singh came with axe and Darati and he gave one axe each to respondents Naini Singh and Tara Singh. Respondents Jashod Singh and Diwan Singh caught Bishan Singh and Nain Singh and Tara Singh gave blows by the blunt side of the axe to Bishan Singh. This occurrence was witnesses by Himmat Singh, Lachman Singh, Gopal Singh, Tej Singh, Bachi Singh and others. His wife Smt. Ramawati arrived raising shrieks. The respondents were caught by Jagat Singh, Bishan Singh and Smt. Ramawati Devi and forcibly took them by truck to the Patwari Headquarter. At the Patwati Headquarter, Jagat Singh wrote the report Ex.Ka-1 which he gave to the Patwari. The Patwari took the blood stained clothes Exts.I to III of Jagat Singh and Bishan Singh. Both the injured went to Dhanachuli Ayurvedic Hospital where the doctor informed that he was not

entitled to do medico legal cases. Hence, these injuries were examined at Nainital Hospital. After investigation, the Patwari submitted charge sheet and the case was committed to the court of Sessions. Thereafter, the charge was framed against the respondents u/s 147, 307/149 IPC and 364 IPC on 13.11.1984. Respondent Jashod Singh and Tara Singh were further charged u/s 395 r/w 398 IPC.

The prosecution in support of his case examined Sri Mange Ram, P.W. 1 Jagat Singh, P.W. 2 Laxman Singh, P.W.3 Gopal Singh S/o Bishan Singh, P.W.4 Gopal Singh S/o Aan Singh and P.W.5 Govind Vallabh, Patwari. The prosecution could not succeed to prove the charges leveled against the respondents, hence the Special Judge, Nainital vide his judgment and order dated 16.4.1986, acquitted these five accused persons/ respondents of the charge framed against them. Aggrieved by the said order, the State has come up in appeal.

I have heard Sri Prabhakar Joshi, learned brief holder for the State and Sri Manoj Mohan, learned amicus curiae for the State and perused the record. A Perusal of the record shows that the record is in torn condition and is not legible, as it has been infested by termites and in absence of record, the appeal cannot be decided. Learned brief holder for the State has stated that after passing of the order dated 16.04.1986 which is under challenge, now the period of 21 years has been expired. Sri Prabhakar Joshi, learned brief holder and Sri Manoj Mohan, learned amicus for the Respondent Nos.2 and 4 also submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz*

Khan Vs. State of U.P. reported in ACC 1992 (29) 223, it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

5. Even otherwise, after perusing the judgment passed by learned Special Judge, Nainital, I do not find any illegality or irregularity in the impugned judgment and other dated 16.04.1986 passed by learned Special Judge, Nainital.

6. In view of the above, the appeal is dismissed. Since Respondents No.1 Jasod Singh, No.3 Nain Singh and No.5 Lal Singh have been reported to be died as has been reported by CJM, Nainital vide his report dated 4.8.2006, hence the appeal against Jasod Singh, Nain Singh and Lal Singh stands abated.

(Dharam Veer, J.)

Rajeev Dang